



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

October 14, 1998

Mr. Helmut Talton
Associate General Counsel
Department of Transportation
125 E. 11th Street
Austin, Texas 78701-2483

OR98-2419

Dear Mr. Talton:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act (the "act"), chapter 552 of the Government Code. Your request was assigned ID# 118696.

The Texas Department of Transportation (the "department") received two requests for a variety of information regarding the following: 1) information concerning the department's codes, directives, and policies on roadside barrier construction (guardrails) from 1990 to the present—both state and federal; and, 2) information concerning maintenance and repair of guardrails on IH-10W Spur 148 Hudspeth County, north of Ft. Hancock. In response to the request, you submit to this office for review a representative sample of the information which you assert is responsive.¹ Through correspondence to this office, you state that the department will make available to the requestor certain documents, however, you seek to withhold all remaining responsive information. You contend that the responsive information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and have reviewed the representative sample of the information at issue.

Initially, we address your assertion that a portion of the request is "unclear" and that the request for information may require the department to perform legal research. The Open Records Act does not require a governmental body to conduct legal research, but a

¹We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

governmental body must make a good faith effort to relate a request to information which it holds. Open Records Decision Nos. 563 (1990), 561 (1990). When a governmental body is presented with a broad request for information rather than for specific records, it should advise the requestor of the types of information available so that they may narrow or clarify their request. *Id.* Thus, if you require further information from the requestor in order to fully comply with this request, you should seek clarification from the requestor. We next address your arguments against disclosure of the requested information.

Section 552.103(a) of the Government Code excepts from disclosure information:

(1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and

(2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

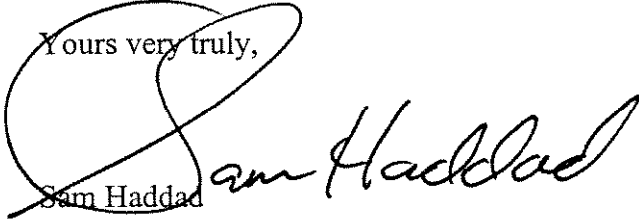
To secure the protection of section 552.103(a), a governmental body must demonstrate that requested information "relates" to a pending or reasonably anticipated judicial or quasi-judicial proceeding. Open Records Decision No. 551 (1990). Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 at 4 (1986).

In Open Records Decision No. 638 (1996), this office stated that a governmental body may establish that litigation is reasonably anticipated by showing that it has received a claim letter from an allegedly injured party or their attorney and by stating that the notice letter complies with the notice of claim provisions of the Texas Tort Claims Act ("TTCA"), Civ. Prac. & Rem. Code, ch. 101, or an applicable municipal ordinance or statute. You state that the department received a notice of claim that meets the requirements of the Texas Tort Claims Act. The notice of claim alleges that the department is responsible for damages arising from a traffic fatality that occurred at the location about which the requestor is seeking information. We conclude that the department reasonably anticipates litigation relating to the traffic accident. Our review of the submitted information indicates that the information is related to the reasonably anticipated litigation. Thus, the department may withhold the information from disclosure pursuant to section 552.103(a) of the Government Code.²

²We note that if the opposing party in the anticipated litigation has seen or had access to the requested information, there would be no justification for withholding that information from disclosure pursuant to section 552.103(a). Open Records Decision Nos. 349 (1982), 320 (1982). In addition, the applicability of section 552.103(a) ends once the litigation has concluded. Attorney General Opinion MW-575 (1982); Open Records Decision No. 350 (1982).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,


Sam Haddad
Assistant Attorney General
Open Records Division

SH/ch

Ref.: ID# 118696

Enclosures: Submitted documents

cc: Ms. Melanie Ozuna
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(w/o enclosures)